



Missouri Department of Natural Resources

MISSOURI CLEAN WATER COMMISSION MEETING

February 13, 2002

Capitol Plaza Hotel, Jefferson City, Missouri

MINUTES

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission
Davis D. Minton, Vice-Chairman, Missouri Clean Water Commission
Janice Schnake Greene, Commissioner, Missouri Clean Water Commission
Arthur E. Hegi, Commissioner, Missouri Clean Water Commission
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission

Katie Auman, Dogwood Alliance, Yellville, Arkansas
Joseph P. Bachant, Department of Conservation, Jefferson City, Missouri
Dana Barhard, Missouri Coalition for the Environment, St. Louis, Missouri
David Bedan, Audobon Missouri, Columbia, Missouri
Harry Bozoian, Assistant Attorney General, Jefferson City, Missouri
Robert Brundage, MO-Ag, PSF, Princeton, Missouri
Mark Buersmeyer, Department of Natural Resources, Jefferson City, Missouri
Mary Cheesebrow, American Bottoms Conservancy, St. Louis, Missouri
Stan Christopher, Archer Engineers, Lee's Summit, Missouri
Randy Clarkson, Department of Natural Resources, Jefferson City, Missouri
Marie Collins, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Ann Crawford, Department of Natural Resources, Jefferson City, Missouri
Beth Cunningham, American Bottoms Conservancy, St. Louis, Missouri
Cindy DiStefano, Department of Conservation, Columbia, Missouri
James R. Dismuke, Farmington Industrial Authority, Farmington, Missouri
Will Enochs, Senator Childers' Office, Jefferson City, Missouri
Chris Erisman, Allgeier, Martin & Associates, Joplin, Missouri
Eric Ervin, Holcim, Inc., Pueblo West, Colorado
Herb C. Fallert, City of Ste. Genevieve, Ste. Genevieve, Missouri
Jaci Ferguson, Region VII EPA, Springfield, Missouri
Kirby Finders, Department of Natural Resources, Jefferson City, Missouri
Ryan Furniss, Washington University School of Law, St. Louis, Missouri
James Gasich, Lake Saint Louis Community Association, Lake Saint Louis, Missouri
Glenn Graham, Perry County Industrial Development Authority, Perryville, Missouri
Christine Gunnin, Missouri Economic Development Council, Marble Hill, Missouri
Thom Gumm, Camden County Commission, Camdenton, Missouri
Bart Hager, Metropolitan St. Louis Sewer District, St. Louis, Missouri

Marvin Harman, Ste. Genevieve County Economic Development, Ste. Genevieve, Missouri
Angel Hartah, Taney County Regional Sewer District, Forsyth, Missouri
Matthew Hathaway, St. Louis Post Dispatch, St. Louis, Missouri
Carl Hauser, Jefferson City, Missouri
Nancy Havicon, Webster Grove Nature Society Heritage Preservation Coalition, Bloomsdale, Missouri
Ted Heisel, Missouri Coalition for the Environment, St. Louis, Missouri
Bob Hentges, Missouri Public Utility Alliance, Jefferson City, Missouri
John Hoagland, Missouri Rural Water Association, Ashland, Missouri
Bill Huskerson, Sunnystope Sewer District, Camdenton, Missouri
Katya Itomlenskis, Missouri Coalition for the Environment, St. Louis, Missouri
Ray A. Ivy, City of LaPlata, LaPlata, Missouri
Ann Keener, Region VII EPA, Kansas City, Kansas
Sallie Keeney, REGFORM, Jefferson City, Missouri
Keith Klein, Holcim, Oklahoma City, Oklahoma
John Knudsen, Department of Natural Resources, Jefferson City, Missouri
Richard J. Laux, Department of Natural Resources, Jefferson City, Missouri
Paul T. Lewis, Fremont Hills, Nixa, Missouri
Maxine Lipeles, Washington University School of Law, St. Louis, Missouri
Barry Lower, Holcim, New Melle, Missouri
John Madras, Department of Natural Resources, Jefferson City, Missouri
Beth Martin, American Bottoms Conservancy, St. Louis, Missouri
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri
Tina Montez, Empire District Electric Company, Joplin, Missouri
Rick Moore, City of Brookfield, Brookfield, Missouri
Mike Mullin, Holcim, St. Louis, Missouri
Deborah Neff, Assistant Attorney General, Jefferson City, Missouri
Kathleen O'Keefe, American Bottoms Conservancy, Nature Study Society, Webster Groves, Missouri
Kevin Perry, REGFORM, Jefferson City, Missouri
David Potthast, Department of Natural Resources, Jefferson City, Missouri
Cory Ridenhour, Missouri Forest Products Association, Jefferson City, Missouri
Tim Quarles, Holcim, Billings, Montana
Charles Raab, Water Services Department, Kansas City, Missouri
John D. Reece, Little Blue Valley Sewer District, Independence, Missouri
Joy Reven, Department of Natural Resources, Jefferson City, Missouri
Tom Ronk, Department of Conservation, Jefferson City, Missouri
Phil Schroeder, Department of Natural Resources, Jefferson City, Missouri
Carrie Schulte, Department of Natural Resources, Jefferson City, Missouri
Gary W. Shaffer, Fremont Hills, Nixa, Missouri
Becky Shannon, Department of Natural Resources, Jefferson City, Missouri
John Souttee, Taney County Regional Sewer District, Forsyth, Missouri
Scott B. Totten, Department of Natural Resources, Jefferson City, Missouri
Steve Townley, Department of Natural Resources, Jefferson City, Missouri

Nongluk Tunyavanich, Meramec Regional Planning Commission, St. James, Missouri
Larry VanGilder, Taney County Regional Sewer District, Branson, Missouri
Kara Valentine, Assistant Attorney General, Jefferson City, Missouri
Diane Waidelich, Secretary, Missouri Clean Water Commission
Steve West, Camden County Commission, Camdenton, Missouri
Robert Williamson, Kansas City Water Services, Kansas City, Missouri
Carolyn Zumalt, Mosby and Blairstown, Warrensburg, Missouri

Chairman Herrmann called the meeting to order at approximately 9:05 a.m. and introduced Commissioners Kelly, Hegi, Greene and Minton; Engineering Section Chief, Randy Clarkson; Secretary, Diane Waidelich; and Assistant Attorney General, Deborah Neff. Commissioner Perry was not in attendance.

ADMINISTRATIVE MATTERS

SRF Project Cost Adjustments

Steve Townley, Chief of the Water Pollution Control Program Financial Services Section, reported the cities of Columbia and Kansas City have requested increases to their fiscal year 2002 project cost allocations. The City of Columbia requested an increase of \$1,629,500 due to increased scope and project cost estimate updates. Mr. Townley stated a number of projects were bypassed during the September 2001 commission meeting at which time several projects were funded from these monies. The outstanding balance in the uncommitted leveraged loan reserve is \$47.8 million. Staff proposed to fund the Columbia increase from that uncommitted reserve leaving \$46.2 million uncommitted.

The City of Kansas City received some of the bypassed monies leaving \$415,000 remaining. In order to participate in the spring closing, the project requires an increase of \$11,585,000. Mr. Townley stated funds for this project would be taken from the fiscal year 2003 project request. He explained the city is purchasing a new headquarters building and completing renovations of that facility.

Mr. Townley stated there would be an outstanding uncommitted balance of \$34.6 million remaining upon approval of both requests. These funds could then become part of the funds available for the fiscal year 2003 Intended Use Plan.

Commissioner Hegi asked if staff foresees not having money available in the State Revolving Fund in the future.

Mr. Townley pointed out that the Intended Use Plan for fiscal year 2003 shows a tremendous contingency list that has not occurred over the past ten years. Staff was previously able to finance almost all applicants. Projects were bypassed this past year for the first time. Mr. Townley stated there was \$357 million worth of projects that staff was not able to finance

and that were placed on the contingency list. He further explained that projects having a higher priority and not able to use all of their funds this year put the remainder on a contingency list status so these monies could be freed up for other communities.

Responding to Commissioner Hegi's question, Mr. Townley replied the program is able to provide interest rates, including fees, of approximately 1.8% in current market situations. He explained it's more attractive to participate in this program versus the private market.

Commissioner Hegi asked who picks up the difference between 1.8% and 5%.

Mr. Townley responded the federal government provides capitalization grants to the state through EPA. Those grant monies are approximately 83% of the money that goes into the financing; the 17% balance is state money.

Commissioner Hegi asked if this money is intended for capital improvement projects.

Mr. Townley pointed out that through the capital improvements that are provided in these communities, water pollution benefits are provided. He added that point and nonpoint source activities are both being done in an attempt to capture all the water quality needs of the state.

Commissioner Minton asked if the commission has historically used the state revolving loans for constructing a building.

Mr. Townley replied it has been done in the past but it is not routine. He continued that maintenance and headquarter facilities are not a high priority by any of the communities. He further explained that communities try to put all of their efforts into the treatment facilities and transportation systems.

Commissioner Minton asked what portion of the \$11 million is going to the development of the building.

Charles Raab, City of Kansas City, reported the breakdown is \$.3 million for bond expenses, \$1.7 million for consulting engineering work, \$2.9 million for land acquisition and \$7.1 million for the building.

Commissioner Hegi noted he doesn't have problems with specific projects but he has a concern that there will not be sufficient money to help the communities that are trying to clean up sewage problems.

Mr. Townley explained this type of activity is eligible under the program and staff has represented to the community over the last several years that money would be available to finance this when they were ready to proceed. He noted if it is the commission's desire to change eligibility, staff will work toward this. Mr. Townley stated the community has a

limited amount of money to work with to make their system improvements and the monies will be utilized in one way or another for water pollution benefits.

Commissioner Minton asked if staff would have loaned them the original amount if they knew ahead of time how much this increase request would be.

Mr. Townley responded in late fall it looked like staff could get the project qualified for a spring closing rather than a fall 2002 closing and staff has probably accelerated this project in order to utilize the money. He continued that this saves the community the cost of an interim direct loan and gets them in an excellent construction market. Mr. Townley reported staff probably knew with Columbia in September that the scope was bigger than originally anticipated.

Commissioner Minton asked if it is the most prudent use of the department's money to construct a building of this nature with this money or allow opportunities to small communities to be funded. He noted he would like to change the emphasis of where the money is loaned because he has problems with constructing buildings as opposed to building sewer lines.

Commissioner Hegi noted he believes funds are too limited to be applying funds in this manner.

Mr. Townley stated Metropolitan St. Louis Sewer District (MSD) projects are next on the Contingency List. The sewer district is not ready to proceed with many of these projects at this time even though they have priority for \$130 million. Mr. Townley stated the biggest environmental bang for the buck is in treatment plants and it is a necessary part of the infrastructure.

Commissioner Hegi asked for Chairman Herrmann's opinion on this issue.

Chairman Herrmann stated the proposed Contingency List totals \$356 million. Most of these dollars are for MSD projects but there are others that may be high priority need although their priority points are considerably lower. MSD is in the process of relocating to a new facility and they did not apply for funds for a new building.

Marie Collins, MSD, stated they do not anticipate beginning construction on their programs that are on the phased and voluntary contingency in the next year or two. It would make no difference to MSD whether or not Kansas City gets funding.

Chairman Herrmann noted MSD did not ask for money because they did not know the commission provided funding for this. He stated this money could be put to better use in funding smaller communities and county sewer district water pollution control projects rather than administrative projects. Chairman Herrmann noted he had the same concern when Platte County was funded several months ago.

Commissioner Hegi asked if it is possible to transfer funds into some pollution projects that Kansas City has been paying for and the city could fund the building.

Mr. Raab said it couldn't be done.

Commissioner Minton noted the increase request from Columbia is because the scope of the project has expanded and it is directly related to pollution control.

Mr. Townley stated Columbia has 73 priority points and Kansas City has 90.

Chairman Herrmann noted the 90 priority points come from the priority system regulation that says how it will affect waters of the state even though it's administrative in nature.

Commissioner Minton asked how building an administrative building would rate 90 priority points.

Mr. Townley did not have specifics on how the 90 priority points were calculated.

Commissioner Minton moved to **approve the staff recommendation to increase the SRF leveraged loan amount requested by the City of Columbia**; seconded by Commissioner Greene and unanimously passed.

Commissioner Minton moved to **deny the City of Kansas City's request for an increase to their SRF leveraged loan amount**; seconded by Commissioner Hegi and passed with Commissioner Greene voting against.

Public Hearing on Proposed Fiscal Year 2003 Clean Water State Revolving Fund Intended Use Plan and State Grant Priority List

All witnesses were sworn in by the court reporter to testify at a public hearing held on the Proposed FY 2003 Clean Water State Revolving Fund Intended Use Plan and State Grant Priority List. A transcript of this hearing will be available for review at the office of the Missouri Clean Water Commission, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri.

Update on Status of Special Infrastructure Grant Funds

Mr. Townley reported the commission directed staff at its January meeting to provide additional information regarding the special infrastructure grant communities. The information has been updated to reflect revised applications that have been received and are now appearing in the draft fiscal year 2003 Intended Use Plan. There have been no activities with the projects since the last meeting regarding bidding or awarding contracts.

Storm Water Grant and Loan Recommendations for First Class Counties and Metropolitan St. Louis Sewer District

Ann Crawford, Water Pollution Control Program Financial Services Section, reported the storm water grant and loan program is another state program offered only to first class counties and cities within first class counties. The individual projects for the counties are determined by a local storm water committee. The cities get their own allocation if they are over 25,000 population. Ms. Crawford noted the commission directed staff to award this money because the cities set their own priorities.

The loan program was set up under Amendment 7 and is slowly growing. Ms. Crawford noted the City of Gladstone's request for \$183,416 was omitted from the list provided to the commission.

Commissioner Hegi stated he attended the storm water meeting in Springfield and it was obvious there was a lot of misunderstanding. He asked if this storm water program is intended for flood control or sewage projects.

Ms. Crawford responded it can be for either one and some flood control has been done in the past. One community is mitigating floodwaters by planting vegetative cover on the back side of a levee. Some buyouts of property for flood control have been done. Ms. Crawford noted a lot of the flood water control is buyouts.

Commissioner Hegi read from an article from last Monday's Springfield newspaper that indicated Springfield public works has identified about \$5 million in storm water improvements for the city alone.

Ms. Crawford responded that Springfield has a separate storm water grant from the county.

Commissioner Hegi said he realizes that but where does the \$5 million worth of need come from.

Ms. Crawford replied they have a need for this much in improvements but it doesn't mean they will be getting this grant money.

Commissioner Hegi noted the article also said the only way to complete these improvements is to get state and federal grants.

Ms. Crawford noted Springfield has a lot of their own projects to address some of these needs. They only get \$434,429 in state grant money. They have used their allocation every year for storm water projects. Ms. Crawford stated staff encourages basin planning which will be paid for and addresses issues where there is construction proposed. She continued that storm water controls could be imposed in subdivisions so runoff doesn't occur downstream.

Responding to Commissioner Hegi's question, Ms. Crawford said as the regulation 10 CSR 20-6.061(4)(E) is currently written, buyouts as flood control are eligible.

Chairman Herrmann asked if this is primarily for storm water storage.

Ms. Crawford said it could also be for a park or something of this nature.

Commissioner Greene moved to **approve the staff recommendation regarding storm water grant and loan recommendations for first class counties and MSD**; seconded by Commissioner Minton and passed with Commissioner Hegi voting against.

Final Commission Action on Staff Recommendations Regarding Glaize Creek, MSD and City of Brookfield Variance Requests

Mr. Townley reported presentations were made at the January commission meeting regarding requests from three communities for variances from regulation language regarding length of bidding time. The commission's intent to grant these three variances was public noticed to individuals residing within the counties where the variance request initiated. Mr. Townley reported the 30-day public notice period ends on February 15 and no comments have been received to date. Mr. Townley recommended granting the variances subject to receipt of any comments prior to the end of the 30-day public notice.

Deborah Neff, commission counsel, stated conditional approval could be given. If comments were received the matter would be brought back before the commission at the March meeting.

Commissioner Greene asked if this would be if any comments were received or just negative comments.

Ms. Neff replied it could be conditioned upon receipt of negative comments.

Commissioner Hegi moved to **grant final approval of the Glaize Creek Variance Request subject to negative comments being received by the end of the public comment period**; seconded by Commissioner Minton and unanimously passed.

Commissioner Greene moved to **grant final approval of the MSD Lower Meramec River Wastewater Treatment Plant Variance Request subject to negative comments being received by the end of the public comment period**; seconded by Commissioner Hegi and unanimously passed.

Commissioner Minton moved to **grant final approval of the City of Brookfield Variance Request subject to negative comments being received by the end of the public comment period**; seconded by Commissioner Hegi and unanimously passed.

Other

Phosphorus

Commissioner Hegi asked to speak on an issue before some members of the audience left the meeting. He stated there is twice as much phosphate coming into the Upper White River as there is space to land apply it. Commissioner Hegi noted there are many working on the issue from cities with phosphorus removal equipment to the small plants, which is so costly. He continued the sludge has to be land applied and there is no place to go with it. Commissioner Hegi pleaded for all the groups working on this issue to come together. He stated this is another Chesapeake Bay. Commissioner Hegi continued septic tanks are still being put in with lateral lines that don't work. He noted he is not being critical of anyone but the parties put blame on each other when something happens. Commissioner Hegi stated it's a complete waste of time. He noted the duplication going on by people that mean well is getting worse and the phosphate has to get out of the watershed. Commissioner Hegi said the lake looks worse than it ever has at this time of year and the issue has been studied to death.

Variance Requests

Chairman Herrmann noted 10 CSR 20-4.040(19)(B)1.A. discusses adequate public notice. The language states that notice has to be in newspapers of general circulation beyond the recipient's locality, preferably statewide, construction trade journals and plan rooms. Chairman Herrmann stated he does not believe this is restrictive enough. He voiced his opinion that direction to staff was indicated.

Commissioner Minton moved to direct staff to **review 10 CSR 20-4.040 (19)(B)1.A. and specifically address what is a plan room and does it constitute sufficient public notice;** seconded by Commissioner Greene and unanimously passed

Commission Action on Preliminary Staff Recommendation Regarding City of Highlandville Variance Request

Ms. Crawford reported the City of Highlandville is on the proposed 2003 IUP fundable list. The community has requested a variance from the provision limiting their eligibility to construction and construction engineering only. Ms. Crawford requested preliminary approval of the variance request.

Commissioner Hegi moved to **grant preliminary approval of the City of Highlandville variance request;** seconded by Commissioner Minton and unanimously passed.

Table Rock Acres

Ms. Crawford reported staff has been working with the Taney County Sewer District trying to find a method to fund Table Rock Acres. A change was made to a regulation some time ago in order to use different criteria for the unemployment statistics. The way the language was originally written discriminated against recreational communities because they have high unemployment during the winter months. Ms. Crawford explained this criteria was changed so an average unemployment rate could be used. This allowed Table Rock Acres to qualify but the regulation only allows hardship grant money down to 2% of the median household income. This is the criteria used by the department and other agencies for all communities across the state. Ms. Crawford stated the user charge is approximately \$40.97 and the community says this is too high for that area. Others that are served in the area have a much lower user charge. Options offered by staff were:

1. Modify the regulatory language which takes about a year;
2. Request that the Regional County Sewer District file a variance application which would set a precedent giving other communities the right to petition for a variance;
3. Encourage the Regional County Sewer District to proceed with the project through the SRF for a loan which might lower the user charge;
4. Encourage the Regional Sewer District to secure funding through other funding sources such as Rural Development or Community Development Block Grant;
5. Encourage the Regional Sewer District to apply for a 40% state grant where the staff would have to analyze the financial status of the district in order to give them a grant. Staff would make a recommendation to the commission as to whether they qualified for a loan or a grant; or
6. Encourage the Regional Sewer District to finance the project through local funds.

Chairman Herrmann questioned if the applicability is based on the standing of the district and not of the community.

Ms. Crawford responded this is correct; the grant cannot be made to a subdivision.

Chairman Herrmann noted this is one of the difficulties encountered continually with these applications. If there is an area of violation and the criteria is applied to the regional authority, you are not considering the implications of correcting the problem in the lower area.

Ms. Crawford noted this is also a problem with the hardship grant.

Commissioner Hegi asked where the subdivision is located.

Larry VanGilder, City of Branson, responded the area is located on Highway 165 just before Table Rock Dam across from Pointe Royale Subdivision. There are about 280 homes that are mostly mobile homes with septic tanks out the front door and no place to put lateral fields. Proactive steps are being taken to get this subdivision on a public sewer. The City of Branson has the treatment plant and there is an agreement worked out. It's a matter of getting the funding to put the lines in the ground.

Commissioner Hegi asked if the fact that a treatment plant already exists is what makes the subdivision not qualify for funding.

Mr. VanGilder responded the City of Branson outside rates are \$14.40 per month because they have a large customer base and the tourism tax has funded the infrastructure for water and sewer over a number of years. Those debt service costs have not had to be passed on to the water and sewer users. Mr. VanGilder stated the subdivision is not in the city but in the county. It's a critical area to get taken care of but all efforts since 1994 have failed.

Commissioner Minton noted he finds it interesting that the commission has historically looked at the public sewer districts to address the financial requirements otherwise the result would be an overwhelming number of requests from other prospective recipients. He stated maybe the way business is conducted needs to be changed.

Mr. VanGilder replied that is why he has been coming to the commission meetings for the last several months.

Chairman Herrmann asked if application has been made under any other programs.

Mr. VanGilder stated a hardship and community development block grant was applied for. Through the rule change for the unemployment rate it was thought the subdivision was on the fundable list but then this last hurdle came up.

Commissioner Greene asked for clarification of the median household income.

Ms. Crawford provided a copy of the rule and explained the grant amount is based on affordability criteria. The user charge for 5,000 gallons per month average user including total debt service operation, maintenance and replacement will not exceed 2% of the applicants median household income as published in the most recent decennial census. The language comes from the federal regulation where the hardship program originally came from. Ms. Crawford noted census data is difficult sometimes because, if the applicant is not shown on the census, county data has to be used.

Commissioner Greene asked if this grant program only funds amounts above 2%.

Ms. Crawford said that is correct. A grant is given so the people only pay 2% of the median household income.

Mr. VanGilder stated a survey was done in 1999 preparing for this. At that time the median household income was about \$18,000 for this particular area. The skewing of the numbers comes with the census because of a town home development project in the same census block.

Chairman Herrmann noted the priority points district-wide are 121.26. He asked if the current IUP would be impacted if they were to request funding under the 40% state grant fund.

Ms. Crawford responded it could affect the projects already on the list.

Chairman Herrmann asked if that is an alternative to address during finalization of the IUP. He asked if Mr. VanGilder needs to submit any documentation.

Ms. Crawford replied a letter has been received from Mr. VanGilder and that should be sufficient.

Chairman Herrmann asked that staff advise them at the March meeting how Table Rock Acres could be funded and not adversely affect others that have a substantial need.

Commission Action on Matters to be Referred to the Office of the Attorney General

Oakwood Mobile Home Park

Kevin Mohammadi, Water Pollution Control Program Enforcement Section Chief, reported the Oakwood Mobile Home Park in Lincoln County is owned and operated by Ms. Jennifer Ferrell. It is served by a wastewater treatment system consisting of an aerated storage tank and a one-cell lagoon. The treatment system is authorized to discharge by a Missouri State Operating Permit. Oakwood was referred to enforcement for failure to submit discharge monitoring reports, failing to submit permit fees, failure to comply with effluent limits, failure to properly operate and maintain the wastewater treatment system, and for allowing the system to bypass. The department offered to resolve these violations in an out-of-court Settlement Agreement in March of 2000. It was then determined that the mobile home park had been recently sold to Ms. Ferrell and the permit had not been transferred into her name, so the department elected not to pursue penalties based upon an informal agreement with Ms. Ferrell to get the wastewater treatment system into compliance. The operating permit for the wastewater treatment system was transferred to Ms. Ferrell in June 2001. In July 2001, an inspection revealed that the wastewater treatment system had not been brought into compliance. The system was not being maintained and was failing to meet permit limits. A Notice of Violation was issued, and the department renewed its demand for return to compliance to resolve the matter in a letter dated August 15, 2001. Ms. Ferrell responded in

a phone call on September 4, 2001 during which she was asked to supply a written counteroffer if she wished to settle the matter out of court. When no letter was received, the department called Ms. Ferrell and left a message on October 15, 2001 again asking for a counter offer. On December 7, 2001, the department again called Ms. Ferrell notifying her that her failure to respond in writing and failure to return phone messages had resulted in the determination that she did not wish to resolve the matter out of court. She was informed that the department's only option was to recommend to management that this matter be referred to the Attorney General's Office for appropriate legal action. To date, Ms. Ferrell has not made an effort to bring her facility into compliance, nor has she contacted the department to resolve this matter. Mr. Mohammadi recommended referral to the Attorney General's Office for appropriate legal action

No one was present representing Oakwood Mobile Home Park.

Commissioner Greene moved to **refer the Oakwood Mobile Home Park to the Office of the Attorney General** for appropriate legal action; seconded by Commissioner Kelly and unanimously passed.

Rose Feed Lot

Mr. Mohammadi reported Rose Feed Lot in Jasper County is an unclassified open cattle-feeding operation consisting of anywhere from 80 – 150 animals. Complaints started in April 1997 and continue today. The department conducted five inspections at the site on April 11 and December 9, 1997, June 4 and August 3, 1998 and June 28, 2001 and issued three NOVs dated April 21, 1997, August 13, 1998 and June 28, 2001 for violations of the Missouri Clean Water Law. The violations included discharging without a permit, causing pollution and violating water quality standards criteria. Animal manure mixed with storm water enters a roadside ditch of old Highway 66 and travel into an unnamed tributary of Center Creek. This discharge of animal wastes, since the feed lot is small and lacks any vegetation, contains foam and is both high in ammonia and turbid. Settlement discussions went on for several months but parties have not been able to reach an agreement. Mr. Mohammadi recommended referral to the Attorney General's Office.

No one was present representing Rose Feed Lot.

Commissioner Hegi asked what kind of permit this operation would need to discharge.

Mr. Mohammadi replied the operation is unclassified under regulation and is not required to have a permit. Once an animal feeding operation has a discharge, then they are required to obtain a permit. In this situation a general permit would probably be required.

Commissioner Hegi asked if any area that has water running off is going to be looked at.

Mr. Mohammadi responded the ones that cause pollution of waters of the state are where the concern lies.

Commissioner Hegi asked if this is a corporation.

Mr. Mohammadi responded it is an individual.

Commissioner Hegi asked if this issue is the result of a mad neighbor. He noted there are a lot of operations that are worse than this one.

Commissioner Minton stated the Department of Agriculture has been awarded \$6 million. He asked if Rose Feed Lot has been informed that there is an opportunity to correct the situation.

Mr. Mohammadi responded the entity has not accepted certified mail. He noted there are a number of opportunities available to provide assistance to design a system for them. Once an application for a permit is filed, staff will direct them to the appropriate agency for assistance.

Commissioner Hegi asked if a fine has been assessed.

Mr. Mohammadi replied penalties are being sought based on the administrative penalties matrix.

Commissioner Greene stated discharge has been ongoing since 1997. She continued she believes staff works with them much too long because discharge is occurring during this time.

Commissioner Greene moved to **refer Rose Feed Lot to the Office of the Attorney General**; seconded by Commissioner Minton and unanimously passed.

Houston Redi-Mix

Mr. Mohammadi reported Big Piney Enterprises, LTD, a corporation in good standing in the State of Missouri, is doing business as Houston Redi-Mix in Texas County. Operations at the facility consist of a concrete plant and gravel washing, sizing, and storage facility. This facility operates under a General Missouri State Operating Permit and storm water discharges to Brushy Creek. The facility's General Permit expired in April 2001 and the company currently has an application for renewal submitted to the department. Due to the size of the facility, it is difficult to operate the plant in its current location and remain in compliance with the Missouri Clean Water Law and the General Permit. In December 2000, staff from the Southeast Regional Office performed an inspection of the facility in response to two public complaints. During the inspection, staff observed large piles of gravel along the stream bank and evidence of sediment washing out of the gravel piles during rain events.

Staff also observed a breached berm in the wash water containment basin that was allowing wash water to leak into Brushy Creek. As a result of the inspection on December 22, 2000, a Notice of Violation was issued for putting and placing large piles of gravel along the stream bank and for poor operation and maintenance of the containment basin. In March 2001, the owner responded to the Notice of Violation and stated he had fixed the containment basin berm and made correction to the plant to redirect storm water and prevent it and gravel from entering the creek. On July 6, 2001 staff from the Southeast Regional Office inspected the site again in response to the owner's report of correcting the problem and found the same violations that previously existed. On July 30, 2001 a Notice of Violation was issued for the same violations previously described. Regional office staff visited the site on October 12, 2001 after a rainfall and observed large amounts of sediments entering the stream from the property. Water samples were collected on October 15, 2001 but the stream had cleared and samples did not show a water quality violation. A meeting was held between Water Pollution Control Program staff, regional office staff, and the owner on October 18, 2001. During the meeting, staff described the violations to the owner and what would have to be done to bring the site into compliance. The owner stated that he was willing to perform the necessary work at the site, but he did not agree with a penalty. The owner has not made changes to his operation to prevent sediment from entering the stream. The owner said he would not make a counter offer to the penalty until he was given access to the penalty matrix showing how the penalty for violations at this facility were calculated. The owner was informed that on the advice of the Attorney General's Office, the department's penalty calculation was to be held confidential, however, the owner was previously supplied 10 CSR 20-3.010 as an example of the penalty matrix. The owner has not made any efforts to bring the facility into compliance and has not made a reasonable offer to the civil penalty for past violations. Staff from the Water Pollution Control Program Enforcement Section telephoned the owner on November 15, 2001 and sent a letter on December 17, 2001 and informed him that the matter was being suggested for referral to the Office of the Attorney General. Mr. Mohammadi recommended that the matter be referred.

No one was present representing Houston Redi-Mix

Commissioner Minton moved **to refer Houston Redi-Mix to the Office of the Attorney General** for appropriate legal action; seconded by Commissioner Kelly and unanimously passed.

Update on Permitting Efficiencies/Modifications to the Missouri Clean Water Law Relating to Senate Bill 741

Phil Schroeder, chief of the Water Pollution Control Program Permits Section, reported the commission asked staff to update them on timeliness of issuing discharge permits. The purpose of these updates is so the commission can determine if the Water Pollution Control Program was meeting its statutory requirements for issuing permits within the 60 or 180 day deadlines imposed by statute and to give the commission sufficient information to make a decision on whether or not they want to make changes to these timelines. Mr. Schroeder

noted the commission has asked for an update at every other commission meeting. A request was also made to summarize Senate Bill 741 that imposed these timelines. Senate Bill 741 became effective August 28, 2000 and raised the fees on almost every category of wastewater permits in the state. As a result, the income from permit fees went from about \$2.3 million annually to about \$4.2 million annually. This brought an increased income to the program for its permitting efforts and associated activities such as inspections and technical assistance. As a result of a request by the commission, the type of permits has been further broken down to track the timelines. Mr. Schroeder reported this was done for seven types of permits: general permits for point source and industrial storm water discharges; general permits for land disturbances; construction permits for treatment systems, construction permits for sewer extensions and lift stations, site-specific operating permits for new facilities; and renewals and modifications of site-specific operating permits.

Mr. Schroeder stated staff has issued approximately 2500 permit actions over the last year. The permit action data system had 1600 data sets. Of that, only about 862 of those were usable for this report. The data is not being entered consistently and there are mistakes in the data being entered. The data entry inconsistency is being looked into.

Commissioner Greene asked if this was data for the entire year.

Mr. Schroeder responded timelines began January 2001 so this represents the full calendar year 2001.

Mr. Schroeder explained the charts he supplied to the commission. Chart A indicates that more than 93% of the applications process for land disturbance and sewer extensions were issued within 60 days and approximately 68% of those permits were issued within 30 days. There were no permits in this data subset that were completed after 180 days. Most of these are processed quickly because there are no public notice requirements associated with these permits. Reviews extending beyond 60 days are probably due to delays caused by elevated third party interest, related enforcement issues or application deficiencies that weren't quickly resolved during the technical review.

Commissioner Greene asked if there is any way to track why some take longer than others.

Mr. Schroeder replied there is currently no way to track this in the permit data set. Another field and another data entry requirement would have to be added. Staff is planning to spot check files to determine what is causing some reviews to take longer than others.

Mr. Schroeder explained that Chart B indicates that about 62% of the applications processed for general operating permits and construction permits for treatment systems are issued within 60 days and approximately 29% are issued between 61 and 180 days and slightly more than 9% required more than 180 days to process. Reviews taking more than 60 days are probably due to two factors. Applications for renewal are required to be submitted 180 days before expiration of the permit. Staff has to wait for that date to draw near before they

can issue the permit. Mr. Schroeder noted staff will try to address this issue in a future rulemaking so that 180-day advance application is not required. Second is that the base permits that the individual general permits are issued from don't always get redrafted before the base general permit expires. This issue is being addressed as well.

Chart C indicates that 62% of the site-specific operating permits are issued within 180 days and 38% are issued after more than 180 days. New permit reviews comprise 72% and are completed between 31 and 90 days. Most of the renewals are completed between 91 and 240 days. Mr. Schroeder noted that new permits generally involve a construction process and the rules require that the development of an operating permit begin while the details of a construction permit are discussed. When it comes time to apply for the operating permit, staff has already developed the operating permit terms, public notice has been completed, and comments resolved. Renewals appear to take less time because the application comes in after the permit is already drafted and ready to issue. Staff has to review the facility's compliance, review for any new technology that may require revisions to the permit and so forth. This all has to be negotiated after an operating permit for renewal is received. Mr. Schroeder stated staff will be focusing more on renewals than new permit issues.

Commissioner Hegi asked if the department has brought in outside assistance.

Mr. Schroeder replied consultants have been hired primarily to address the permit backlog, which involves applications received prior to the timelines going into effect. They are not currently addressing the new applications that are received. The new permit timeliness are being addressed with the permit efficiency efforts.

Responding to Commissioner Hegi's question, Mr. Schroeder stated the purpose of a permit renewal is to make sure the way a permit was previously written has been effective in controlling the effects of effluents on the beneficial uses of waters of the state. Staff does sometimes find a need to make revisions to a permit during the renewal process to address known water quality issues that have developed over the last five years.

Mr. Schroeder explained data entry will be improved to present better reports to the commission. There will be twelve permit types to be able to define which are required to have a public notice. Procedures are being revised to work toward being able to track the statutory timelines. Mr. Schroeder asked if the commission wants to continue to collect all the data from January 2001 or work with a two-month window of data.

Chairman Herrmann requested data from 2001 and a report of the past two months which will illustrate the efficiencies that have been implemented and how they have affected the performance.

Robert Brundage commended Mr. Schroeder for continuing to work on this issue. He asked the commission to keep up with this issue. He noted using two months of data is a good idea

and comparing 2001 to 2002 would also be good. Mr. Brundage stated the commission has the rulemaking authority to change the timelines.

Other

Clean Water State Revolving Fund/Nonpoint Source

Commissioner Minton moved that the Clean Water Commission **direct the Water Pollution Control Program staff to provide the commission with a proposal, prior to the next commission meeting, to address nonpoint source pollution with funding from the Clean Water State Revolving Fund or any appropriate fund that staff can direct those monies to come from for the purpose to include recommendations for funding to make a viable program. Additionally this proposal should attempt to implement the knowledge learned from 319 projects and the SALT projects.** Motion was seconded by Commissioner Greene and unanimously passed.

Commissioner Minton moved that the Clean Water Commission **direct the Water Pollution Control Program staff to invite the Soil and Water Conservation Commission to hold a joint meeting for the purpose of discussing the possibility of implementing a joint nonpoint source pollution program;** seconded by Commissioner Greene and unanimously passed.

The commission recessed for lunch at approximately 12:30 p.m. and reconvened at approximately 1:05 p.m.

LEGAL MATTERS

Report and Recommendation on Appeal 362 Holnam, Inc. Water Quality Certification

A transcript of this item will be available for review at the office of the Missouri Clean Water Commission, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri.

Commissioner Greene moved to **go into closed session** at approximately 1:50 p.m. to discuss legal, confidential, or privileged matters under section 610.021(1), RSMo; personnel actions under Section 610.021(3), RSMo; personnel records or applications under Section 610.021(13), RSMo or records under Section 610.021(14), RSMo which are otherwise protected from disclosure by law; seconded by Commissioner Minton and unanimously passed.

Commissioner Minton moved to **return to open session** at approximately 3:15 p.m.; seconded by Commissioner Greene and passed with Commissioner Hegi being absent during the roll call vote.

Commissioner Minton moved to **table final action on Appeal 362 in order to make the final decision at the March 19 commission meeting**; seconded by Commissioner Hegi and passed with Commissioner Greene voting against.

Appeal 356 Greg Gunnels Denial of Water Quality Certification

Ms. Neff reported Mr. Gunnels was denied a water quality certification by the department. A timely appeal was then filed. On November 1, 2001, Mr. Gunnels filed a letter asking that his appeal be withdrawn. Based on appellant's request to withdraw the appeal, Ms. Neff requested the commission grant this request.

Commissioner Greene moved to **grant the request to dismiss Appeal 356**; seconded by Commissioner Minton and unanimously passed.

The commission signed the order dismissing Appeal 356.

Appeal 357 U.S. Army Maneuver Support Center & Fort Leonard Wood Dismissal With Prejudice

Ms. Neff explained during the pendency of this appeal, a settlement was reached by the parties. Fort Leonard Wood filed a request to dismiss with the hearing officer who recommended dismissal. Ms. Neff requested the commission dismiss this matter as settlement has been reached.

Commissioner Hegi moved to **dismiss Appeal 357**; seconded by Commissioner Greene and unanimously passed.

The commission signed the order dismissing this appeal.

Other

Future Meeting Dates

The commission scheduled meetings as follows: June 26 and August 7 in central Missouri, September 26 in Kansas City in conjunction with the Kansas City Chamber of Commerce reception, and November 6 in Springfield.

EDUCATIONAL SESSION

Presentations were made to the commission by John Knudsen, Department of Natural Resources; Brian Brookshire, Department of Conservation; Katie Auman, Dougwood Alliance; and Cory Ridenhour, Missouri Forest Products Association, on forestry practices to provide background information relating to the chip mill issue.

There being no further action to come before the commission, Chairman Herrmann adjourned the meeting at approximately 5:00 p.m.

Respectfully submitted,

Scott B. Totten
Interim Director of Staff